

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

THE STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No.
)	CR-201700516
ROGER DELANE WILSON,)	
)	
Defendant.)	

Wednesday, August 7, 2019
Bisbee, Arizona

OFFICIAL COURT REPORTER'S TRANSCRIPT
HEARING ON MOTIONS
EXCERPT FROM PROCEEDINGS
DEFENDANT'S OUTBURST AT THE END OF PROCEEDINGS
BEFORE: THE HONORABLE JAMES L. CONLOGUE, JUDGE

COPY

VAN G. HONEMAN, RDR
Official Court Reporter
Cochise County Superior Court
Bisbee, Arizona
AZ Certified Reporter #50335

APPEARANCES:

For the State:

LORI ZUCCO, Esq.
Deputy County Attorney

- - -

For the Defendant:

STEVEN WEST, Esq.
Attorney at Law
Tucson, AZ

- - -

1 * * * MR. WEST: So I just want a clarification,
2 Judge, and can I continue on? You're going to give us
3 another hearing and we'll come back in terms of these
4 'due process issues?

5 THE COURT: I think -- well, and how much
6 time do you feel you'll need to take if you just focused
7 on the voluntariness of the interview itself? Do you have
8 quite a bit more on that?

9 MR. WEST: I think I can give you an
10 example. I think this statement is replete with other
11 examples, but I don't think that it's -- I mean, we have
12 the transcript, I don't intend to read that right into the
13 record.

14 THE COURT: I will read it, so I think it's
15 important for me to read it. Do you agree with that?

16 MR. WEST: Yes, sir.

17 THE COURT: I will read it in terms of
18 making a decision on voluntariness.

19 MS. ZUCCO: Your Honor, do you have the
20 recording as well, because I would ask that you listen
21 to the recording.

22 THE COURT: I don't have it. I mean,
23 I think it was sealed and --

24 MS. ZUCCO: Okay. Well, then can I do a
25 supplement to the record with the recording as contained

1 in my response motion?

2 MR. WEST: Well, I have no problem listening
3 to the recording, Judge, and it may be fair to say --

4 THE DEFENDANT: Bitching --

5 MR. WEST: One moment, Judge.

6 (Mr. West and the defendant had a discussion
7 off the record.)

8 MR. WEST: Can I make a comment, your Honor?

9 THE COURT: Sure, please.

10 MR. WEST: I was not part of any of these
11 supposed proceedings, but, apparently, there was a
12 proceeding some months earlier in this case prior to the
13 presentation of February 15 where a request was made to
14 have his statement rechecked for errors, and I don't know
15 if anything like that ever happened and I don't even know
16 if that request was made.

17 THE COURT: I'm not positive it ever
18 happened. I don't know procedurally how it came up,
19 but I don't think it even happened.

20 MR. WEST: I could clarify.

21 THE COURT: Is it Mr. Wilson reviewing the
22 statement against the recording? Is that what we're
23 talking?

24 MR. WEST: I don't believe so. I think it's
25 just words like "rumor" instead of "tumor" or "tumor"

1 instead of "rumor".

2 THE DEFENDANT: Your Honor, I understand why
3 that doesn't help me.

4 THE COURT: Okay. So do we want to do that
5 now? Do we want to clarify the statement before I look at
6 it?

7 THE DEFENDANT: But this --

8 MR. WEST: Please don't talk, please!

9 THE DEFENDANT: I don't think so.

10 MR. WEST: Judge, you know, procedurally,
11 before this ever gets to a grand jury, if it goes to a
12 jury, that's appropriate. However, from my perspective,
13 these are called errors and you would probably agree it
14 could have said "tumor" instead of "rumor", you know,
15 that kind of thing, but the bulk of it is fair to provide
16 in a courtroom.

17 THE COURT: I appreciate that. Thank you.

18 MR. WEST: Yes, sir.

19 MS. ZUCCO: So, your Honor, the recording is
20 already part of the record, it's under seal, so can we do
21 a stipulation that we'll just submit a copy to chambers
22 for your review, or do you want it again filed as part of
23 the record?

24 THE COURT: I don't want it filed any more.
25 And if it's okay with counsel, I think you

1 gave me one and when I finish listening to it, I am going
2 to shred it, I mean, I'll put it in the shredder and make
3 it into a million pieces.

4 MR. WEST: It could be unsealed for the
5 purpose of you reviewing it.

6 MS. ZUCCO: That's fine too.

7 MR. WEST: So and just put it back under
8 seal when you finish.

9 THE COURT: Okay. I believe that it is
10 being stored somewhere other than here.

11 MS. ZUCCO: Because it's easier for me to
12 give you a copy.

13 MR. WEST: I have no objection to you
14 getting another copy of that for your own personal
15 edification while you read the transcript.

16 THE COURT: So what I am going to do is
17 I'll find some time, I'll put the audio on, I'll get
18 the transcript and I'll look at them, I'll look at the
19 transcript simultaneously with listening to the recording,
20 and if it's "tumor" that should be "rumor", I think that
21 would be --

22 THE DEFENDANT: Number one, right above
23 that, there is -- it says I'm lucky to be handled, that's
24 what the transcript says, but that's a situation to me,
25 so what it does is not just send it back, it's not

1 accurate, and I would ask the Court because it's not an
2 accurate transcript, it shouldn't go to the grand jury,
3 they should not present those transcripts to the grand
4 jury.

5 THE COURT: Mr. West, did you have further
6 questions from the detective related to the interview
7 itself?

8 MR. WEST: I don't think so, Judge.

9 THE COURT: All right. And then Ms. Zucco,
10 what you're requesting is that -- well, what you're
11 requesting is that we not deal with it at all because
12 it's legally impermissible because it's just a 12.9 motion
13 in disguise?

14 MS. ZUCCO: Yes. I understand that
15 they're captioning it, again, I think you may have seen
16 it, but I'm requesting that it be seen as a 12.9 motion in
17 disguise and that it's a legal issue and that it's legally
18 precluded.

19 Your Honor gave a cite earlier. Do you have
20 that cite? Okay. I'll find it.

21 THE COURT: I mean, this is -- what I'm
22 trying to get at and it is that -- well, No. 1, a motion
23 to dismiss, that has to be a due process violation,
24 I mean, it has to be something that we simply can't go
25 forward with, and that's much different than the standard

1 on 12.9, it's just very different.

2 Now, there are some other issues that have
3 been raised, I mean, in terms of the charges themselves,
4 so first degree murder, then the lesser-included offenses,
5 but the rule says that if you charged greater, that
6 lesser-included offenses are automatically there, so this
7 has come up before, and one thing that we certainly will
8 not be doing regardless of anything else that happens is
9 that we're not going to read all those charges to the
10 jury as the charges, it's going to be first degree murder
11 and that's the only thing the jury is going to hear and
12 until it's time to instruct them on the lesser-included
13 offenses. I mean, you can argue that and you know it's
14 coming, it's mandatory, they have to not be instructed
15 on the lesser-included offenses and how that works,
16 if you can't -- if you find the defendant not guilty of
17 the greater charge, you can't decide after fair
18 deliberation, then you go to the next one and so forth,
19 but I agree you can't have all three charges.

20 I think that --

21 MS. ZUCCO: I conceded that in my response
22 and maybe that's how we're going to do it here or some
23 people do it here and, you know, the State was always
24 intending that only the first degree murder gets read and
25 the others aren't brought up until jury instructions.

1 THE COURT: I think, and again I don't know,
2 but my thought on it is I think that some prosecutors like
3 to give the grand jury all of them in case the grand jury
4 says oh, no probable cause on the greater offense,
5 but here is probable cause on this one.

6 MS. ZUCCO: That was my thinking in this
7 case, your Honor.

8 THE COURT: That that might be the reason,
9 I don't know, but it's -- the jury is only going to hear
10 about one charge whether they are dismissed without
11 prejudice or however you want to handle that, but that's
12 all there is.

13 THE DEFENDANT: So the last two years,
14 my due process, the law two years have been incredibly
15 exhausting.

16 MR. WEST: Did anybody ask you to talk?
17 Is anybody addressing you, Roger?

18 THE DEFENDANT: What are you talking about?

19 MR. WEST: Because I'm tired of you
20 interrupting my statements, I can't proceed on your behalf
21 if you're going to keep interrupting. I would appreciate
22 it --

23 THE DEFENDANT: Judge, just so that's all
24 I have to say -- I'm done.

25 THE COURT: All right. So that there --

1 well, there could be due process violations that relates
2 to the grand jury, I think that that's legally possible,
3 but that's different from a motion under 12.9, and I think
4 the evidence related to that would be quite different.
5 Whether there is a problem with procedure, I think that's
6 12.9.

7 Now, on the statements, and I don't think an
8 attorney made a statement, but there have been statements
9 about perjury. I think if the indictment was based on
10 perjury, that would be a due process violation and that
11 would, I think, authorize the Court to take action
12 including a dismissal, but it would have to be serious
13 violations like that and not simply, I don't mean anything
14 that, in terms of a fair presentation, and even the issues
15 related to exculpatory evidence and so forth, I think
16 those are 12.9 issues, but on something that went to the
17 very heart of the process of perjured testimony, knowing
18 perjury, that that wouldn't authorize the Court to
19 dismiss.

20 So we can go one of two ways. I mean, if
21 you, Mr. West, believe that you have some issues that
22 would actually be due process violations that would not
23 fall under 12.9, that if it were an issue separate from
24 12.9 and it would be a due process violation, if you want
25 to inquire into those, you can do that now, and I don't

1 think we're going to go very much further than that unless
2 there is something I missed, I'm not going to decide.

3 There are certain issues that you can
4 raise under Rule 12.9, and the remedy there is to send it
5 back to the grand jury, that's the remedy, just get it.
6 It's not dismissal. I mean, you just send it back to the
7 grand jury. But there are egregious actions that could be
8 a due process violation that would authorize the Court to
9 simply say, "I'm dismissing this matter," that's possible.

10 So I want to give Mr. West some leeway in
11 terms of making a record on anything that you believe,
12 Mr. West, that could fall into that second category that
13 would be egregious errors, that that would constitute a
14 due process violation, but not things like that you see in
15 a 12.9 motion that would lead to a remand still getting
16 quizzical looks.

17 Mr. West, do you have questions?

18 MR. WEST: Well, as I understood a little
19 while ago, Ms. Zucco is not prepared to address those
20 issues because her office isn't prepared to answer these
21 kinds of questions, and I follow what you're saying and
22 I agree to disagree because I think sometimes due process
23 encompasses part of 12.9 whether you like it or not,
24 so okay, in addition, we don't -- they are not
25 indivisible where one is one thing and another is another.

1 Sometimes they must be -- because that's what makes the
2 due process violation is cumulative effects of things.

3 So, you know, I can proceed with where
4 I was going to go, but if she's not prepared, then I would
5 prefer to give the State a fair chance to get ready and
6 then we have to come back down here and address that
7 motion itself.

8 THE COURT: All right. Do we have anything
9 more on the motion to suppress the statements?

10 MR. WEST: No, sir.

11 THE COURT: You do?

12 MR. WEST: No.

13 THE COURT: All right. Well, we can take
14 that up, and then so what you're suggesting is we take
15 that up, that you argue and then set a different time on
16 the motion to suppress, maybe legal argument.

17 MR. WEST: The motion to dismiss.

18 THE COURT: I'm sorry, the motion to
19 dismiss. I said that one other time.

20 Now, and then Mr. Wilson will have to
21 let me know if he does wish to proceed with a request to
22 represent himself, we'll save that for hearing as well,
23 and that could in fact be set after we set the motion
24 to dismiss, and so what I am going to assume is that,
25 Mr. Wilson, you're going to want to make that motion,

1 and you can withdraw if you like to.

2 THE DEFENDANT: Your Honor, I do have
3 problems with the legality of this, and I do understand
4 Mr. West's position, and the difficulty is I'm not an
5 attorney, it's a huge case, Judge, but it's only a huge
6 case because of the facts of false things that have been
7 injected into the case, these are known to be false,
8 this is a contaminus conduct, this is not oh, well, the
9 process; right? When I've asked my attorney to bring
10 these two up so that the Court can make -- my attorney is
11 working me, he wants to sand bag the city.

12 MR. WEST: Would you sit down? I don't
13 appreciate you telling them my strategy in your case
14 to get a ruling that --

15 THE DEFENDANT: We --

16 MR. WEST: No!

17 THE COURT: We do have --

18 THE DEFENDANT: Your question to me, Judge.

19 THE COURT: No. You're going to have to
20 cooperate.

21 THE DEFENDANT: And, Judge, whether he wants
22 to sand bag, I don't want to sand bag this thing --

23 THE COURT: Yeah. Okay. We're going --

24 THE DEFENDANT: -- and to deal with this.

25 November, this November --

1 THE COURT: We're done.

2 THE DEFENDANT: Your Honor --

3 THE COURT: We'll re-set hearings in the
4 future. I think that there are going to have to be
5 additional discussion, and this is --

6 THE DEFENDANT: I don't understand sand
7 bagging me, Judge, you're not giving me my day in court,
8 I want my day in court! If you're going to set it for
9 trial, set it for this week, let me have my day because
10 all the conditions for release already exist, they already
11 exist, and I'm not willing to destroy my life by allowing
12 this bitch to continue with her misconduct, I'm tired of
13 this bullshit! I'll kick your God damned ass, I'll kick
14 you, motherfucker!

15 (The defendant was removed from the
16 courtroom.)

17 (The proceedings were concluded at
18 3:40 p.m.)

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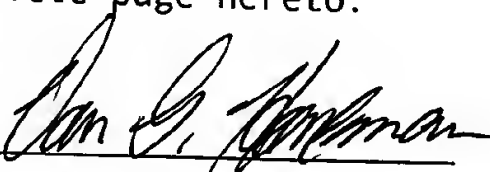
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C E R T I F I C A T E

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2
3 I, Van G. Honeman, do hereby certify that
4 as an Official Court Reporter for the Cochise County
5 Superior Court, I reported the foregoing proceedings to
6 the best of my skill and ability; and that the same was
7 transcribed by me via computer-aided transcription; and
8 that the foregoing pages of typewritten matter are a true,
9 correct and complete transcript of all the proceedings
10 had as set forth in the title page hereto.

11
12 

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